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TILLY'S, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDWARD DAVIS, an individual,

Plaintiff,

v.

TILLY'S, INC., a Delaware corporation;
and DOES 1-10, inclusive,

Defendants.

Case No. 5:15-cv-01338-JGB-KK

**[PROPOSED] CONFIDENTIALITY
AND PROTECTIVE ORDER**

Filed: June 22, 2015
Removed: July 6, 2015
Ctr: 1

1 Pursuant to the stipulation of the Parties, it is hereby ordered that the following
2 provisions shall apply to all discovery in this litigation, to govern the use and
3 dissemination of information, documents, and other tangible items designated as
4 CONFIDENTIAL INFORMATION as set forth below:

5 1. Designation of Confidential Information. This Confidentiality and
6 Protective Order applies to all discovery in this action whether directed to the Parties or
7 third parties. Confidential information is information, documents or other material that
8 concerns or relates to personal, private, confidential, commercially sensitive, and/or
9 proprietary information of the Parties which the Parties would normally not reveal to
10 third parties or would cause third parties to maintain in confidence, including, without
11 limitation, trade secrets, website design, non-publicly available financial data,
12 contracts and agreements, current and future business plans, marketing research,
13 development or commercial information, projections, analyses or studies, costs, pricing,
14 or purchasing information, training and operation policies and procedures, sensitive
15 medical information, personal identifying information, and other non-public,
16 confidential information (“CONFIDENTIAL INFORMATION”). A Party may
17 designate information as CONFIDENTIAL INFORMATION by placing a stamp or
18 notice stating “CONFIDENTIAL” prior to production. The designation shall be placed
19 on the first page of each document which is bound, stapled, or otherwise affixed by a
20 permanent or semi-permanent means of attachment, and on each page of any document
21 not so affixed. If information is produced in electronic format, such information may
22 be designated as CONFIDENTIAL INFORMATION by placing a stamp or notice on
23 the storage medium. With respect to documents produced by third parties, designation
24 may be made within 45 days after receipt by counsel. With respect to documents made
25 available for inspection and copying, designation need not be made until after
26 inspection and selection by counsel. Any such designated documents shall be stamped
27 “CONFIDENTIAL” by the copying service selected by the inspecting Party.
28 Information disclosed at a deposition (including without limitation, questions, answers

1 and exhibits) may be designated as CONFIDENTIAL INFORMATION by a statement
2 on the record, or in writing within 30 days after completion of the original transcript of
3 the deposition. The entire deposition transcript may not be labeled as
4 CONFIDENTIAL INFORMATION, rather, only specific lines that contain
5 CONFIDENTIAL INFORMATION may be so designated. If only a portion or
6 portions of the information or item warrant protection, the Designating Party, to the
7 extent practicable, shall identify the protected portion(s).

8 2. Subsequent Designation. Information or documents inadvertently
9 disclosed without being designated as CONFIDENTIAL INFORMATION may be
10 subsequently designated as such with written notice of that designation and a
11 replacement copy, marked in accordance with this Protective Order. There will be no
12 breach of this Protective Order for any disclosure made prior to receipt of such notice
13 that would otherwise have been authorized by this Protective Order but for the
14 subsequent designation. Upon correction of a designation, the Receiving Party must
15 make reasonable efforts to ensure that the material is treated in accordance with the
16 provisions of this Protective Order.

17 3. Challenging Designation. A Party may challenge the designation of any
18 document as “CONFIDENTIAL INFORMATION” under this Protective Order by
19 notifying the Designating Party in writing of said challenge, including the identity of
20 each document to which the challenge is directed and the bases supporting the
21 challenge. Within fourteen (14) days of receipt of such challenge, the Parties shall
22 meet-and-confer in good faith in an effort to resolve the matter informally. If the
23 Parties are unable to resolve their dispute, the Challenging Party must file a
24 motion to determine the propriety of the challenged designation. Any motion
25 challenging a designation shall be made in strict compliance the Local Rules of the
26 Central District of California, particularly Local Rules 37-1 and 37-2, including the
27 Joint Stipulation requirement. Until the Court rules on the challenge, all Parties shall
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1 continue to treat the material as confidential. The Designating Party shall bear the
2 burden of demonstrating that confidential treatment is warranted.

3 4. Permissible Disclosures. Material designated as CONFIDENTIAL
4 INFORMATION shall be used only for the prosecution or defense of this litigation and
5 for no other purpose, and may not be disclosed to any person other than:

- 6 A. The Court and its personnel;
- 7 B. Any mediator or settlement officer that may be retained by the
8 Parties;
- 9 C. The Parties and their agents, independent contractors, and
10 employees who have a reasonable need to know such
11 information;
- 12 D. The Parties' counsel of record, including their support staff;
- 13 E. Consultants or experts retained by any Party for purpose of
14 assisting in the preparation, investigation, or presentation of
15 claims or defenses in this litigation;
- 16 F. Copy, data, hosting, court reporters, and other providers of
17 litigation services retained by the Parties for the purposes of this
18 litigation; and
- 19 G. A witness in this litigation that may be examined and may testify
20 concerning CONFIDENTIAL INFORMATION.

21 Any person to whom CONFIDENTIAL INFORMATION is shown and falls
22 within paragraph (B) or (E) shall agree in writing to be bound by the terms of this
23 Protective Order by signing an "Agreement to be Bound by Protective Order" attached
24 as Exhibit A hereto. The original, executed Agreement to be Bound by Protective
25 Order signed by persons receiving CONFIDENTIAL INFORMATION shall be
26 maintained by counsel who obtained the agreement and shall be produced to the
27 Designating Party at his written request.

1 Notwithstanding any restrictions in this Confidentiality and Protective Order
2 regarding the use or disclosure of materials designated as CONFIDENTIAL
3 INFORMATION, nothing contained herein shall prevent any Party from disclosing its
4 own CONFIDENTIAL INFORMATION as deemed appropriate. In addition, nothing
5 contained herein shall prevent any Party from disclosing or using information
6 designated as CONFIDENTIAL INFORMATION that it received from a source other
7 than the discovery process in this action.

8 5. Protection from Disclosure. Anyone in possession of CONFIDENTIAL
9 INFORMATION shall take reasonable measures to bar access to the designated
10 information by anyone not allowed access pursuant to the terms of this Confidentiality
11 and Protective Order. If anyone subject to this Confidentiality and Protective Order
12 receives a subpoena or other process to produce CONFIDENTIAL INFORMATION,
13 then the recipient shall promptly give notice of the same to the Designating Party's
14 counsel. The recipient may not produce any CONFIDENTIAL INFORMATION prior
15 to the date specified for production to afford the Designating Party an opportunity to
16 object to the process and seek protection from the Court. If a Receiving Party learns
17 that, by inadvertence or otherwise, it has disclosed CONFIDENTIAL INFORMATION
18 to any person or in any circumstance not authorized under this Protective Order, the
19 Receiving Party must immediately (a) notify in writing the Designating Party of the
20 unauthorized disclosures, (b) make reasonable efforts to retrieve all unauthorized
21 copies, notes, excerpts and summaries of the CONFIDENTIAL INFORMATION, and
22 (c) inform the person or persons to whom unauthorized disclosures were made of all the
23 terms of this Protective Order. However, nothing contained in this Confidentiality and
24 Protective Order is intended or should be construed as authorizing a party in this action
25 to disobey a lawful subpoena issued in another action.

26 6. Filing and Use in Court of Designated Confidential Documents. In
27 accordance with Local Rule 79-5.1, if any papers to be filed with the Court contain
28 information and/or documents that have been designated as "Confidential Information,"

1 the proposed filing shall be accompanied by an application to file the papers or the
2 portion thereof containing the designated information or documents (if such portion is
3 segregable) under seal; and the application shall be directed to the judge to whom the
4 papers are directed. For motions, the parties shall publicly file a redacted version of the
5 motion and supporting papers.

6 The foregoing procedures do not apply to the use of CONFIDENTIAL
7 INFORMATION during trial. The Parties agree to meet-and-confer in advance of the
8 final pretrial conference to discuss the use of CONFIDENTIAL INFORMATION at
9 trial in a manner acceptable to the Parties and the Court.

10 7. Non-Termination. The provisions of this Confidentiality and Protective
11 Order shall not terminate at the conclusion of this action and the obligation to comply
12 shall continue indefinitely thereafter. Following the conclusion of this litigation
13 (defined as the end of this matter by trial, motion, or settlement and, if concluded by
14 motion or trial, the exhaustion of available appeals or the running of time for taking
15 such appeals, as provided by applicable law), the Parties subject to this Protective Order
16 shall, upon request of the Designating Party, make reasonable efforts to return all
17 copies of CONFIDENTIAL INFORMATION, but are not required to return or destroy
18 attorney work product or pleadings that may include or quote from CONFIDENTIAL
19 INFORMATION. Within 60 days after the final disposition of this proceeding, the
20 Receiving Party shall return all Confidential Material to the Designating Party. As used
21 in this subdivision, "all Confidential Material" includes all copies, abstracts, excerpts,
22 and any other format reproducing or capturing any CONFIDENTIAL
23 INFORMATION.

24 8. Any use of CONFIDENTIAL INFORMATION at trial or other court
25 hearings or proceedings shall be governed by the orders of the trial judge.
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2 **IT IS SO ORDERED**

3 DATED: January 15, 2016

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HON. KENLY KIYA KATO
United States Magistrate Judge
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ATTACHMENT A

I, _____, have been advised by counsel of record for plaintiff or defendant in the matter of *Edward Davis v. Tilly's, Inc.*, United States District Court, Central District of California, Southern Division, Case No. 5:15-cv-01338-JGB-KK, of the Confidentiality and Protective Order governing delivery, exhibition, publication, or disclosure to me of confidential documents and information produced in this litigation, together with the information contained therein. I have read a copy of said Confidentiality and Protective Order and agree to abide by its terms, including its limitation on any further delivery, exhibition, publication or disclosure of documents and information subject to the order.

DATED: _____, 20__

[Printed Name]

[Signature]